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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

FRED Y. HADAEGH,

Plaintiff and Respondent,

v.

SHAHZAD KHALIGH,

Defendant and Appellant.

B286461

(Los Angeles County
Super. Ct. No. BC579732)

APPEAL from a judgment of the Superior Court of Los Angeles County, Marc Marmaro, Judge. Affirmed.

Greines, Martin, Stein & Richland and Marc J. Poster for Defendant and Appellant.

Eanet, Matthew L. Eanet and Brian D. Lauter for Plaintiff and Respondent.

Defendant Shahzad Khaligh¹ appeals from a judgment entered in favor of plaintiff Fred Y. Hadaegh after the trial court granted Hadaegh's motion for judgment on the pleadings on his cause of action on a 2004 judgment against Khaligh. The trial court rejected Khaligh's argument Hadaegh's action was time-barred under the applicable 10-year statute of limitations. The trial court concluded that, as a result of Khaligh's 2005 filing of a voluntary Chapter 13 bankruptcy proceeding, the automatic stay under title 11 United States Code section 362(a) tolled the statute of limitations during the 27-month pendency of the bankruptcy proceeding. On appeal, Khaligh contends the automatic stay terminated 30 days after the commencement of her Chapter 13 proceeding pursuant to the amendments to title 11 United States Code section 362 enacted in 2005 as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub.L. No. 109-8 (Apr. 20, 2005) 119 Stat. 23 (codified as amended at 11 U.S.C. §§ 101-1502)) (BAPCPA) because the proceeding was brought within one year of the dismissal of a prior bankruptcy proceeding. (11 U.S.C. § 362(c)(3)(A) (section 362(c)(3)(A)).) Thus, Khaligh asserts, Hadaegh's action on the judgment was untimely. Khaligh's contention lacks merit because she filed her Chapter 13 bankruptcy petition before section 362(c)(3)(A)'s effective date of October 17, 2005 (180 days after enactment). We affirm.

¹ Khaligh's first name appears as Shahrzad and Shahzad in the record. We use the spelling Khaligh uses in her briefing.

FACTUAL AND PROCEDURAL BACKGROUND²

A. *Prior Arbitration and Bankruptcy Proceedings*

On October 2, 2001 an arbitrator awarded Hadaegh \$100,000 against Khaligh. On December 16, 2002 Khaligh filed a voluntary petition for bankruptcy under Chapter 7 of the United States Bankruptcy Code (11 U.S.C. §§ 701-784) (Chapter 7 proceeding).

² The factual and procedural background is taken from the judicially noticed documents in the trial court and on appeal. Hadaegh requests we take judicial notice of the March 31, 2003 order discharging Khaligh's Chapter 7 bankruptcy proceeding; the April 5, 2005 order granting summary judgment in Hadaegh's adversary proceeding filed in the Chapter 7 proceeding; the dockets from the Chapter 7 proceeding, the adversary proceeding, and Khaligh's 2005 Chapter 13 proceeding; and the remarks of President George W. Bush upon signing BAPCPA in 2005. Khaligh opposes the request on the ground Hadaegh could have sought judicial notice of the documents in the trial court, but did not. Granting of judicial notice on appeal is appropriate, and we grant Hadaegh's request to take judicial notice of the bankruptcy court orders and dockets. (Evid. Code, §§ 452, subd. (c) & (d), 459, subd. (a); *Van Zant v. Apple Inc.* (2014) 229 Cal.App.4th 965, 969, fn. 2, 971, fn. 3 [taking judicial notice on appeal of orders and dockets from related actions in United States District Court].) We also take judicial notice of each of the matters judicially noticed by the trial court. (Evid. Code, § 459, subd. (a).) However, we deny Hadaegh's request to take judicial notice of the remarks of President Bush as not necessary to our resolution of this appeal. (See *Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [judicial notice denied where "the requests present no issue for which judicial notice of these items is necessary, helpful, or relevant"]; *Appel v. Superior Court* (2013) 214 Cal.App.4th 329, 342, fn. 6 [judicial notice denied where materials are not "relevant or necessary" to the court's analysis].)

On March 24, 2003 Hadaegh filed an adversary proceeding in the Chapter 7 proceeding to determine the nondischargeability of Khaligh's \$100,000 debt (adversary proceeding). On March 31, 2003 the bankruptcy court granted Khaligh a discharge in the Chapter 7 proceeding.

On October 30, 2003 Hadaegh filed a motion in the Chapter 7 proceeding for relief from the automatic stay³ to allow him to file a petition in the superior court for confirmation of the \$100,000 arbitration award. On December 8, 2003 the bankruptcy court dismissed Hadaegh's motion as moot, finding the automatic stay did not prevent Hadaegh from "pursu[ing] his remedies in the State Court." On February 20, 2004 the bankruptcy court ordered the Chapter 7 proceeding closed.

In 2004 Hadaegh filed a petition in the superior court to confirm the arbitration award. The court granted Hadaegh's petition, and on April 15, 2004 the court entered a judgment against Khaligh. Hadaegh served notice of entry of judgment on Khaligh by mail on April 19, 2004. Khaligh did not appeal the judgment.

In 2005 Hadaegh filed a motion for summary judgment in the adversary proceeding. On April 5, 2005 the bankruptcy court granted Hadaegh's motion and entered a judgment excepting from discharge the \$100,000 judgment entered by the superior court on

³ Title 11 United States Code section 524(a) provides, "A discharge in a case under this title— [¶] (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under . . . this title, whether or not discharge of such debt is waived; [¶] (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived"

April 15, 2004, plus interest. Khaligh appealed, and the judgment was affirmed. (*In re Khaligh* (Bankr. 9th Cir. 2006) 338 B.R. 817; *In re Khaligh* (9th Cir. 2007) 506 F.3d 956.)

On October 14, 2005 Khaligh filed a voluntary petition for bankruptcy under Chapter 13 of the United States Bankruptcy Code (11 U.S.C. §§ 1301-1330) (Chapter 13 proceeding). After Khaligh failed to appear at a meeting of creditors convened under title 11 United States Code section 341(a), on December 8, 2005 the bankruptcy trustee moved to dismiss the Chapter 13 proceeding. On December 14, 2005 the bankruptcy court entered an order granting the motion and dismissing the proceeding.⁴ The bankruptcy court order provided, “All stay and restraining orders arising under Bankruptcy Code §362(a) and §1301 are vacated and dissolved”

On December 23, 2005 the bankruptcy trustee moved to vacate the dismissal order under Federal Rules of Civil Procedure, rule 60(b) on the ground “the dismissal resulted from a mistake or excusable neglect” because the court had issued two notices reflecting different dates for the meeting of creditors at which Khaligh failed to appear. On February 2, 2006 the bankruptcy court entered an order vacating the prior order of dismissal and reinstating the Chapter 13 proceeding. The bankruptcy court

⁴ The bankruptcy court filed the order on December 13, 2005 and entered it on December 14. The later order reinstating the Chapter 13 proceeding was filed on January 31, 2006 and entered on February 2. Similarly, the bankruptcy court filed its order ultimately dismissing Khaligh’s Chapter 13 proceeding on February 7, 2008 and entered it on February 8. The parties are inconsistent in their use of the date of filing or entry of the orders in their appellate briefs. For consistency, we use the date of entry. Whether we use the date of filing or entry of the orders does not change the outcome on appeal.

reinstated “[a]ll stay and restraining orders arising under Bankruptcy Code §362(a) and §1301” and “[a]ll pending motions and adversary proceedings.”

Following reinstatement, the Chapter 13 proceeding continued under the same case number. At Khaligh’s request, on February 8, 2008 the bankruptcy court dismissed the Chapter 13 proceeding.

B. *Trial Court Proceedings*

On April 23, 2015 Hadaegh filed a complaint against Khaligh and other defendants, including a cause of action on the 2004 judgment under Code of Civil Procedure section 683.050.⁵ On August 26, 2015 Hadaegh filed the operative first amended complaint.⁶ After the trial court overruled Khaligh’s demurrer, Khaligh entered a general denial and asserted in her sixth affirmative defense that the statute of limitations barred the cause of action on the judgment.

Hadaegh filed a motion for judgment on the pleadings and entry of a separate judgment as to his cause of action on the judgment, in which he requested entry of a judgment in the amount of \$223,120.96 based on the April 15, 2004 judgment plus accrued interest. Hadaegh asserted his action was timely under the applicable 10-year statute of limitations because the automatic stay

⁵ Code of Civil Procedure section 683.050 provides, “Nothing in this chapter limits any right the judgment creditor may have to bring an action on a judgment, but any such action shall be commenced within the period prescribed by Section 337.5.”

⁶ The complaint and first amended complaint also alleged causes of action for fraud, fraudulent transfer, civil conspiracy, and resulting trust against Khaligh and additional causes of action against the other defendants.

imposed as a result of the Chapter 13 proceeding tolled the statute of limitations for 847 days, from October 14, 2005, when Khaligh filed her Chapter 13 petition, to February 8, 2008, when the bankruptcy court dismissed the proceeding. In support of his motion, Hadaegh requested the court take judicial notice of the April 15, 2004 judgment, Khaligh's October 14, 2005 Chapter 13 petition, and the February 8, 2008 order dismissing the Chapter 13 proceeding.

Khaligh opposed the motion, arguing the automatic stay was initially in effect only 61 days, from the filing of the Chapter 13 proceeding on October 14, 2005 to the December 14, 2005 dismissal of the proceeding. She pointed out Hadaegh failed to address the period between the dismissal and the reinstatement of the Chapter 13 proceeding in his calculations. Khaligh also asserted the reinstatement of the Chapter 13 proceeding on February 2, 2006 was within one year of the dismissal of her Chapter 7 proceeding in light of entry of the judgment in the adversary proceeding on April 5, 2005, so any stay resulting from the February 2, 2006 reinstatement order terminated after 30 days pursuant to section 362(c)(3)(A). Khaligh contended the combined duration of the stays (61 days plus 30 days) did not sufficiently toll the statute of limitations to make Hadaegh's action on the judgment timely. In support of her opposition, Khaligh requested the court take judicial notice of the December 14, 2005 order dismissing Khaligh's Chapter 13 proceeding and the clerk's February 2, 2006 notice of the order vacating the dismissal and reinstating the Chapter 13 proceeding.

In his reply, Hadaegh argued section 362(c)(3)(A) did not apply because it was not in effect at the time Khaligh filed her Chapter 13 petition, and the bankruptcy court's reinstatement of the Chapter 13 proceeding did not constitute the filing of a new bankruptcy proceeding by Khaligh. Hadaegh also noted the

bankruptcy court's February 2, 2006 order specifically reinstated "[a]ll stay and restraining orders" under the bankruptcy code. Hadaegh requested the court take judicial notice of the bankruptcy trustee's December 23, 2005 motion to vacate the order dismissing Khaligh's Chapter 13 proceeding and the bankruptcy court's February 2, 2006 order vacating the order of dismissal.

The trial court granted all requests for judicial notice. On June 6, 2016, after a hearing, the trial court granted Hadaegh's motion for judgment on the pleadings, but denied his motion for a separate judgment. The court adopted its tentative ruling, which stated the bankruptcy court's February 2, 2006 "order vacating the dismissal had the effect of reinstating the case as if there had never been a dismissal. Consequently, the 30-day period set forth in [section 362](c)(3)(A) is not applicable to the facts of this case." Further, the court found as to the Chapter 7 adversary proceeding, "Although Khaligh contends that the Chapter 7 case remained pending until April 2005—i.e., when the Chapter 7 bankruptcy court granted Plaintiff's motion for summary judgment—this contention conflates the discharge of the bankruptcy with the adversary proceeding filed in connection with the bankruptcy." The court concluded Hadaegh's action on the judgment was timely.

Hadaegh later voluntarily dismissed his remaining causes of action. On September 26, 2017 the trial court entered judgment in favor of Hadaegh. Khaligh timely appealed.

DISCUSSION

A. *Standard of Review*

"A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards. [Citations.] The motion should be denied if

the defendant's pleadings raise a material issue or set up affirmative matter constituting a defense; for purposes of ruling on the motion, the trial court must treat all of the defendant's allegations as being true.” (*People ex rel. Becerra v. Superior Court* (2018) 29 Cal.App.5th 486, 499; accord, *Allstate Ins. Co. v. Kim W.* (1984) 160 Cal.App.3d 326, 330-331 [“A plaintiff's motion for judgment on the pleadings is analogous to a plaintiff's demurrer to an answer and is evaluated by the same standards.”].) “The determination of the sufficiency of the answer requires an examination of the complaint because its adequacy is with reference to the complaint it purports to answer.” (*South Shore Land Co. v. Petersen* (1964) 226 Cal.App.2d 725, 733.)

In ruling on a motion for judgment on the pleadings, we “disregard any allegations of [a pleading] that conflict with judicially noticed documents.” (*York v. City of Los Angeles* (2019) 33 Cal.App.5th 1178, 1193; accord, *Bockrath v. Aldrich Chemical Co.* (1999) 21 Cal.4th 71, 83 [in ruling on a demurrer, a pleading's “allegations may be disregarded when they conflict with judicially noticed discovery responses”]; *Dondlinger v. Los Angeles County Regional Park & Open Space Dist.* (2019) 31 Cal.App.5th 994, 997-998 [on a motion for judgment on the pleadings, “[t]he trial court must accept as true all material facts properly pleaded, but does not consider . . . allegations contrary to law or facts that are judicially noticed”].)

We review a trial court's ruling on a motion for judgment on the pleadings de novo. (*York v. City of Los Angeles, supra*, 33 Cal.App.5th at p. 1193 [““A motion for judgment on the pleadings is equivalent to a demurrer and is governed by the same de novo standard of review.””]; *Dondlinger v. Los Angeles County Regional Park & Open Space Dist., supra*, 31 Cal.App.5th at p. 998

[“We independently review the trial court’s ruling on a motion for judgment on the pleadings”].)

Here, Khaligh generally denied all allegations in Hadaegh’s first amended complaint and asserted defenses including the statute of limitations. Khaligh opposed Hadaegh’s motion for judgment on the pleadings on the sole basis the action was barred by the statute of limitations. Therefore, we independently review whether, based on the judicially noticed documents, the statute of limitations barred Hadaegh’s cause of action on the 2004 judgment.

B. *Hadaegh’s Cause of Action on the Judgment Was Timely Because the Automatic Stay Tolled the Statute of Limitations During the Pendency of Khaligh’s Chapter 13 Proceeding*

1. *The 10-year statute of limitations ran from the date Hadaegh’s 2004 judgment became final*

California law provides a judgment creditor may generally not enforce a money judgment more than 10 years after the date of entry of a money judgment. (Code Civ. Proc., § 683.020, subd. (a) [“Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment . . . [¶] [t]he judgment may not be enforced.”]; *Kertesz v. Ostrovsky* (2004) 115 Cal.App.4th 369, 372 (*Kertesz*) [“Code of Civil Procedure section 683.020 . . . provides after the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property the judgment may not be enforced.”].) To avoid the bar of Code of Civil Procedure section 683.020, a judgment creditor may preserve the judgment by filing an application for renewal of the judgment under sections 683.120 and 683.130 before expiration of the 10-year enforceability period. (*Kertesz*, at p. 372.) Alternatively, “[a] judgment creditor may bring an independent action on a judgment even after the 10-year enforceability period

has expired *if* the 10-year statute of limitations in [Code of Civil Procedure] section 337.5 has not yet run.”⁷ (*Fidelity Creditor Service, Inc. v. Browne* (2001) 89 Cal.App.4th 195, 200-201; accord, *Kertesz*, at p. 373.)

“The statute of limitations for an action on a judgment does not accrue until the judgment is final. The judgment is not final until the time within which to appeal the judgment has expired.” (*Kertesz, supra*, 115 Cal.App.4th at p. 373; accord, *Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 288, fn. 6 [“the [limitations] period applicable to actions on a judgment begins when the judgment is final”].)

The judgment confirming the arbitration award became final on June 18, 2004, 60 days after notice of entry of the judgment was served by Hadaegh on April 19, 2004.⁸ (See Cal. Rules of Court, rule 8.104(a)(1)(A), (B) [where a party serves the notice of entry of judgment, the notice of appeal must be filed on or before “60 days after the party filing the notice of appeal serves or is served by a party with a document entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment, accompanied by proof of service,” unless the superior court clerk had earlier served a notice of entry of judgment].)

⁷ Code of Civil Procedure section 337.5, subdivision (b), establishes a 10-year statute of limitation for an “action upon a judgment or decree of any court of the United States or of any state within the United States.”

⁸ In calculating the time to appeal, we do not add five days for the mailing of the notice of entry of judgment. (Code Civ. Proc., § 1013, subd. (a) [five-day extension of time to respond to notice served by mail “shall not apply to extend the time for filing [a] notice of appeal”].)

Thus, absent tolling of the statute of limitations, Hadaegh's action on the judgment had to be filed by June 18, 2014. It is undisputed Hadaegh filed the complaint on April 23, 2015, 309 days after the 10-year limitations period had run.

2. *The automatic stay tolls the statute of limitations until the earlier of the dismissal of the bankruptcy proceeding, the grant or denial of a discharge, or closing of the proceeding*

Hadaegh contends his action was timely because Khaligh's filing of the Chapter 13 proceeding on October 14, 2005 tolled the statute of limitations during the pendency of the proceeding until February 8, 2008, when the proceeding was dismissed, a period of 847 days. Hadaegh is correct.⁹

Title 11 United States Code section 362(a)(2) provides that the filing of a bankruptcy petition operates as a stay of "the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title." Similarly, section 362(a)(1) provides that "[t]he filing of a bankruptcy petition operates as an automatic stay of the commencement or continuation of a judicial proceeding against the debtor that was or could have been commenced before the

⁹ We do not reach Khaligh's contention the automatic stay was not in effect during the period between the December 14, 2005 dismissal and the February 2, 2006 order vacating the dismissal and reinstating the Chapter 13 proceeding because the inclusion of this 59 days in the tolling period is not material to our analysis. We note, however, as discussed below, that orders vacating a prior bankruptcy court order generally have the effect that "[i]t is as if the vacated order had never been issued." (*In re La Sierra Financial Services, Inc.* (Bankr. 9th Cir. 2002) 290 B.R. 718, 732.)

commencement of the bankruptcy proceeding.” (*Inco Development Corp. v. Superior Court* (2005) 131 Cal.App.4th 1014, 1019; accord, *Kertesz, supra*, 115 Cal.App.4th at p. 376 [under 11 U.S.C. § 362(a) “all legal actions being taken or to be taken against the debtor are halted”].)

Code of Civil Procedure section 356 provides, “When the commencement of an action is stayed by injunction or statutory prohibition, the time of the continuance of the injunction or prohibition is not part of the time limited for the commencement of the action.” A bankruptcy stay is a “statutory prohibition” within the meaning of section 356, “so that the period of time of the automatic stay is not counted as part of the limitations time.” (*Inco Development Corp. v. Superior Court, supra*, 131 Cal.App.4th at p. 1019; accord, *Kertesz, supra*, 115 Cal.App.4th at pp. 376, 378 [“Because the commencement of appellants’ new action on the judgment was stayed during the pendency of the automatic stay, the California statute of limitations was tolled during this period and appellants’ complaint is not time barred.”].) Thus, the limitations period on Hadaegh’s action on the judgment was tolled during the period in which the automatic stay imposed by the filing of Khaligh’s Chapter 13 proceeding remained in effect.

Generally, the automatic stay imposed by the initiation of a bankruptcy proceeding remains in effect for the duration of the proceeding, absent judicial intervention. (See 11 U.S.C. § 362(c)(2) [“the stay of any other act under subsection (a) of this section continues until the earliest of— [¶] (A) the time the case is closed; [¶] (B) the time the case is dismissed; or [¶] (C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied”]; *In re Smith* (1st Cir. 2018) 910 F.3d 576, 581 [“Before BAPCPA, the automatic stay ‘remain[ed] in force’ for all

filers until specific judicial action lifted or modified it, or until the end of the bankruptcy case.”].)

In 2005 Congress enacted BAPCPA, which amended title 11 United States Code section 362 to limit the length of the automatic stay where the debtor files a bankruptcy proceeding within one year of the dismissal of the debtor’s prior bankruptcy proceeding. Under section 362(c)(3)(A), where the debtor files the later bankruptcy petition within a year of the dismissal of the prior petition, the automatic stay is terminated 30 days after the filing of the later bankruptcy petition.¹⁰ (*In re Smith, supra*, 910 F.3d at p. 578 [“[Section] 362(c)(3)(A) terminates the entire stay thirty days after the filing of a second petition.”]; *In re Reswick* (Bankr. 9th Cir. 2011) 446 B.R. 362, 373 [“On the debtor’s second filing within a year, the stay terminates in its entirety 30 days after the second case is filed, unless a motion to continue the stay is made and a hearing held within the 30-day period . . . ”].) We therefore consider whether section 362(c)(3)(A) applied to Khaligh’s filing of the Chapter 13 proceeding, limiting the automatic stay to 30 days.

¹⁰ Section 362(c)(3)(A) now provides, “if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)— [¶] (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt . . . shall terminate with respect to the debtor on the 30th day after the filing of the later case”

3. *Section 362(c)(3)(A) does not apply to the filing of Khaligh's Chapter 13 petition*

Hadaegh contends section 362(c)(3)(A) does not apply to Khaligh's Chapter 13 proceeding because section 362(c)(3)(A) became effective on October 17, 2005, after Khaligh filed the Chapter 13 proceeding. We agree.

Khaligh filed her Chapter 13 petition on October 14, 2005. BAPCPA was enacted on April 20, 2005 and took effect on October 17, 2005. (See Pub.L. No. 109-8, § 1501(a) (Apr. 20, 2005) 119 Stat 216 ["[T]his Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act."]; *In re Ajaka* (Bankr. N.D. Ga. 2007) 370 B.R. 426, 427 ["Effective October 17, 2005, amendments to the Bankruptcy Code . . . added provisions to 11 U.S.C. § 362 to limit the application of the automatic stay in bankruptcy cases filed following one or more prior bankruptcy cases filed by the same debtor within the preceding twelve months."].) The amendment limiting the automatic stay to 30 days applies only to cases filed on or after October 17, 2005. (See Pub.L. No. 109-8, § 1501(b)(1) (Apr. 20, 2005) 119 Stat 216 ["[T]he amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act."]; *In re Ross* (Bankr. E.D. Va., Mar. 21, 2006, No. 06-30313 DOT) 2006 WL 2078590, at *2 [30-day stay applies to bankruptcy cases "commenced on or after October 17, 2005"].) Because Khaligh filed her petition before October 17, 2005, section 362(c)(3)(A) does not apply to her Chapter 13 case.

Khaligh does not dispute that section 362(c)(3)(A) took effect on October 17, 2005, but contends the February 2, 2006 reinstatement of the Chapter 13 proceeding constituted the commencement of a new case. Khaligh cites no authority for the proposition the reinstatement of a bankruptcy case after a dismissal

is the commencement of a new case. The argument is contrary to title 11 United States Code section 301(a), which provides, “A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition” The bankruptcy court’s February 2, 2006 order vacating the dismissal of the Chapter 13 proceeding simply reinstated the case already commenced. (See *In re Vega* (9th Cir. Apr. 19, 2000, No. 98-56569) 2000 WL 425012, *2 [“[W]hen a court uses [Federal Rules of Civil Procedure,] Rule 60 to vacate an order, it restores the parties to the position they were in before the court issued the vacated order.”]; *In re La Sierra Financial Services, Inc.*, *supra*, 290 B.R. at p. 732 [“The effect of an order granting [Federal Rules of Civil Procedure,] Rule 60(b) relief is to restore the parties to the position they were in before the court issued the vacated order.”].) Indeed, Khaligh’s Chapter 13 case continued under the same case number.

Likewise, the bankruptcy court’s order expressly reinstated “[a]ll stay and restraining orders arising under Bankruptcy Code §362(a) and §1301,” thereby reinstating the automatic stay imposed by Khaligh’s October 14, 2005 filing. (See *In re Vega*, *supra*, 2000 WL 425012 at p. *2 [“The bankruptcy court in this case reinstated [debtor]’s Chapter 13 petition when it vacated its earlier order dismissing it. In so doing, it also reinstated the protections a Chapter 13 petition triggers, including the automatic stay.”]; *In re Searcy* (Bankr. W.D. Ark. 2004) 313 B.R. 439, 443 [“When a case is reinstated, the automatic stay is also reinstated.”].) Because the bankruptcy court’s reinstatement of Khaligh’s Chapter 13 proceeding did not commence a new proceeding, Khaligh’s filing of the Chapter 13 proceeding on October 14, 2005 predated the effective date of BAPCPA. Therefore, the automatic stay remained in effect from the filing of the Chapter 13 petition on October 14,

2005 to the dismissal of the proceeding on February 8, 2008, for a total of 847 days.¹¹

DISPOSITION

The judgment is affirmed. Hadaegh is to recover his costs on appeal.

FEUER, J.

WE CONCUR:

ZELON, Acting P. J.

SEGAL, J.

¹¹ Because we conclude Khaligh filed the Chapter 13 petition before the effective date of section 362(c)(3)(A), we need not reach Khaligh's argument the Chapter 7 proceeding was dismissed (based on the April 5, 2005 entry of judgment in the adversary proceeding) within the one-year period preceding the filing of her Chapter 13 petition on October 14, 2005.